

Privacy Trends and Legislation

Office of Privacy and Data Protection
January 27, 2022

Today's Presentation

- Introductions
- Data Privacy Day Recognition
- Words from our lawmakers
- Privacy Law Overview
- National Activity
- Washington State Legislation
- Wrap-up

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Speakers



Katy Ruckle

WA State Chief Privacy Officer



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Privacy and Data Protection Manager

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www.watech.wa.gov/Data-Privacy-Week-2022





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Privacy Law Overview

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				State laws	
VPPA			FERPA		
	COPPA				4th Amdt.
				HIPAA	
		GLBA			
Privacy Act					

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				State laws	
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		GLBA			
Privacy Act					

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Key considerations

Enforcement

- Agency enforcement
- Private right of action
- Regulation

Right to cure

Preemption

- Floor vs. ceiling

Sell vs. share



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Key considerations

Scope of personal information

- Individual, household, device

Exercising individual rights

- Global opt-out, third parties

Dark patterns

Scope



National Activity

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A Step Forward for Federal Privacy Legislation

By Sarah Parker - Edited by Nika Shahery

December 05, 2018

Could a Federal Data Privacy Law be a Reality in 2019?

Friday, March 29, 2019

December 12, 2019

Is A Federal Privacy Law In The Cards for 2020?

Robert E. Slavkin

Akerman LLP - Health Law Rx

February 12, 2021

Wonder How 2021 May Differ From 2020? Federal Data Privacy May Be Enacted – Be Prepared

 The Hill

States are failing on big tech and privacy — Biden must take the lead | TheHill

January 27, 2021

2021 Looks To Be A Landmark Year In Privacy

— **Privacy state-of-play:** New state-level privacy bills are up for consideration on both sides of the country — momentum that could make the matter even more urgent for the 117th Congress.

TECHTANK

How our outdated privacy laws doomed contact-tracing apps

Jessica Rich · Thursday, January 28, 2021

The Washington Post

CONGRESS RAN out of excuses for its inability to pass a privacy law years ago. Now, some of its members are promising they'll finally do their jobs

Congress's aim to do by the end of 2022 what it should have done as long ago as 2012 may be described as unambitious; more generously, it could be described as realistic. Another failure to deliver, however, would surely be embarrassing.





Information Transparency and Personal Data Control Act

-Rep. DelBene (D-Wa.)

Consumer Data Privacy and Security Act

-Sen. Moran (R-Kan.)

Online Privacy Act

-Rep. Eshoo (D-Ca.) and Rep. Lofgren (D-Ca.)

Consumer Online Privacy Rights Act (2019)

-Sen. Cantwell

Specific authority re: COPPA, CAN-SPAM, HITECH

General authority re: unfair or deceptive acts or practices

ANPRM, December 2021 – “The Commission is considering initiating a rulemaking . . . To curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.”

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Four Attorneys General Claim Google Secretly Tracked People

Three states and the District of Columbia allege that the tech giant misled consumers by continuing to track those who had changed their privacy settings to prevent data collection.

Other states – existing laws

	California	Virginia	Colorado
Enforcement	AG, new agency, limited private right of action	AG only	AG only, with some rulemaking authority
Right to cure	Yes, until January 2023	Yes	Yes, until January 2025
Sell vs. share	Sharing	Exchanging for monetary consideration	Exchanging for monetary or other valuable consideration
Personal information	Linked to individual, family or device	Linked to individual or device linked to individual	Linked to individual or device linked to individual
Global opt-out	Yes	Not contemplated	Yes, beginning July 2024
Dark patterns	Yes	Not contemplated	Yes

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Other states – proposed laws

Uniform Personal Data Protection Act

Active legislation in at least 20 states

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Washington State Legislation

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Trends in Washington

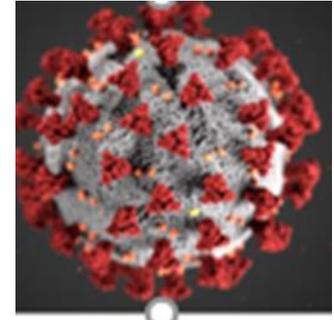
Out this year	In this year	In every year
Public health information	Minors' rights	Comprehensive consumer bills
	Elections	Data brokers
		Gov't data protection
		Public records exemptions

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Trends in Washington

Last year – Focus on public health

- COVID-19 Health Data Privacy (HB 1127)
- WPA – Exposure Notification App sections (SB 5062)
- PRA exemptions for contact tracing info (SHB 1328)
- Codify emergency orders to protect privacy
 - (SB 5113 reintroduced this year but no hearing scheduled)

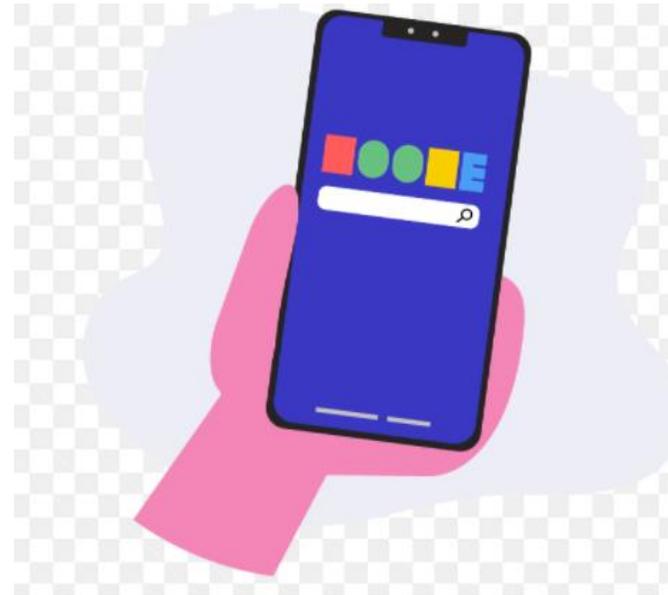


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Trends in Washington

This year –

- Minors' rights
- Elections



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Trends in Washington: Minors' Rights

HB 1697

An act relating to privacy rights for Washington minors.

- Prohibits online operators from marketing or advertising specified products and services to minors.
- Restricts certain online advertising practices based on the personal information of minors.
- Provides minors the right to request and obtain removal of certain information posted online.
- Provides that violations are enforceable solely by the AGO under the CPA and subject to civil penalties and statutory damages.



Trends in Washington: Minors' Rights



SB 5813 – Consumer Data Privacy Protections

- Part 1 focuses on Minors:
 - Regulates the collection and security practices for personal data of children and adolescents.

Requires:

- Consent – for processing sensitive data or targeted ads
- Rights – access, delete, correct
- Duties – transparency on collection, security, data minimization, purpose limits
- Data Protection Assessments - required

Federal Law: COPPA

Trends in Washington: Elections

- HB 1796 - Requiring verification of citizenship for voter registration. (no hearing)
- HB 1953 - Exempting sensitive voter information on ballot return envelopes, ballot declarations, and signature correction forms from public disclosure
 - Signatures**
 - Voter phone number**
 - Email address**



Trends in Washington: Comprehensive consumer data privacy



HB 1850

“Protecting and enforcing the foundational data privacy rights of Washingtonians.”

- Data rights - access, correction, deletion, data portability, and opt-out
- Controller duties - transparency, purpose specification, data minimization, security, and nondiscrimination.
- Creates the Washington State Consumer Data Privacy Commission vested with administrative, rulemaking, and enforcement authority.
- Provides that violations are enforceable by the AGO under the CPA.
- Creates a PRA to enjoin violations and recover actual damages.
- Imposes a registration and annual fee on data collectors.



Trends in Washington: Comprehensive consumer data privacy

SB 5813:

“establishing data privacy protections to strengthen a consumer's ability to access, manage, and protect their personal data.”

- Right to opt out of processing for purposes of targeted advertising or the sale of personal data beginning July 1, 2024.
- Requires the AGO in consultation with Office of Privacy and Data Protection to adopt rules establishing technical specifications for one or more do not track mechanisms by July 1, 2024.
- 30-day Right to cure period
- Enforcement include limited private right of action for injunctive relief and attorney’s fees



Trends in Washington: Comprehensive consumer data privacy

SB 5062 – Introduced last session/Reintroduced this session – “Washington Privacy Act”

- Establishes consumer personal data rights of access, correction, deletion, data portability and opt-out of the processing of personal data for specified purposes.
- Defines obligations for controllers and processors of personal data who are legal entities that meet specified thresholds.
- Identifies controller responsibilities, including transparency, purpose specification, data minimization, security, and nondiscrimination.
- Provides that violations are enforceable by the AGO under the CPA
- Creates a private right of action for certain violations and limits remedies to appropriate injunctive relief.
- Preempts local laws and ordinances related to the processing of personal data.
- Regulates the processing of data collected by private and public entities for certain public health emergency and contact tracing purposes.

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Trends in Washington: Comprehensive consumer data privacy

HB 1433 - Creating a charter of people's personal data rights.

- Introduced last session and reintroduced this session
- Known as “People’s Privacy Act”
- Requires entities to provide clear and accessible data privacy policies,
- Requires affirmative, opt-in consent for the collection and use of PII
- Prohibited companies from refusing to serve, or charge higher prices to customers who choose not to allow the use of their PII,
- Makes it unlawful for companies and government agencies to use people’s PII to discriminate against them
- Provided private right of action



Comprehensive Consumer Privacy Bills

Right	5062	1850
Deletion	A consumer has the right to delete personal data concerning the consumer.	A consumer has the right to delete personal data concerning the consumer, including data from all parts of a controller or processor's network and backup systems.
Opt-out	Consumer has the right to opt-out of sale.	Consumer has the right to opt-out of sharing.
Correct	consumer has the right to correct inaccurate personal data concerning the consumer, taking into account the nature of the personal data and the purposes of the processing of the personal data	
Access	A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the categories of personal data the controller is processing.	A consumer has the right to confirm whether or not a controller is processing personal data concerning the consumer and access the personal data the controller is processing.

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Trends in Washington: Data Brokers

Last year: HB 1303 - Regulation and taxation of the sale of Washingtonian's personal information and related data

This year: SB 5813

Part 2 Requires data brokers to

- Register with the state; and
- Comply with consumer requests to exercise rights of access, delete, or correct.



Trends in Washington: New Public Records Act Exemptions

HB 1956/SB 5859 – Exempts sensitive records about incarcerated individuals

HB 1984 – Protect privacy of addresses related to vehicle registration

HB 1991 – Requires body worn camera recordings to be released unredacted in limited circumstances for prosecution and defense purposes

SB 5869 – Allows for toll camera images to be provided to law enforcement with a warrant

(SB 5113 emergency orders and HB 1953 voter signatures)



Trends in Washington: Government Data Protection



Sale of Data	HB 1552 HB 2013 (DOL)	Prohibits state agencies from selling data to 3 rd parties
Protection of Data (cybersecurity)	HB 2044 SB 5916 SB 5432 SB 5834	Data backup req'ts (ransomware) Companion to 2044 Creation of OCS OPDP "establish" privacy principles
Use of Data (AI, ADS, Facial Rec)	SB 5116 SB 5104	Algorithm accountability review Moratorium on Facial Rec use in the state

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Trends in Washington: Government Data Protection



Purpose Statement

The government performs a variety of functions that require personal information. Public agencies have an obligation to handle personal information about Washington residents responsibly and in a fair and transparent way. The purpose of this document is to articulate fundamental privacy principles to guide agency practices and establish public trust. See RCW 43.105.369(3)(c).

Quick plug!

Test your knowledge:

Please join the Office of Privacy and Data Protection to recognize and celebrate Data Privacy Day! We will host a presentation on the Washington State Agency Privacy Principles followed by a Kahoot quiz game on the principles and other data privacy trivia. Learn and test your data privacy knowledge (anonymously of course!)

Date: Friday, January 28, 2022

Time: 10 to 10:45am

Where: Teams invite

privacy@ocio.wa.gov

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Happy Data Privacy Week!

Thank you!

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